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LABOR LAW INVALID.

Breckons Holds Law Unconstitutional.

In an opinion delivered on the Hawaii Shingo United States District attorney Breckons shows that the Territory law excluding Japanese from public works is unconstitutional. This opinion in full is as follows:

In my opinion, the law in question is invalid and the courts will not enforce the same. My reasons for this opinion are as follows:

The fourteenth amendment to the Constitution of the United States provides among other things as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of the law, nor deny to any person within the jurisdiction the equal protection of the laws."

This provision is also enforced by legislation enacted by Congress, being Sec. 1977, Revised Statutes of the United States, which is as follows:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licences, and exactions of every kind, and to no other."

The latter part of the amendment above quoted "nor deny to any person within its jurisdiction the equal protection of the laws" has in every instance in which it has been before the courts, been held to cover the case of all persons, whether citizens or aliens, residing within the jurisdiction; hence all aliens, residing within the Territory of Hawaii, are protected by the clause.

The law of the Territory of Hawaii, referred to, certainly discriminates between persons resident within the Territory. By its terms all persons are not equally entitled to acquire and enjoy property. By its terms, impediments are interposed to the pursuits of some which are not applied to the same pursuits by the others.

The constitutional amendment has been applied by the Federal and State courts in a variety of cases, many of them, to my way of thinking, involving the same principal as is involved in this question under consideration.

The Territorial Act is as palpably aimed at the Japanese and Chinese labor, as though it had said so in as many words. It is known that a very large percentage of laborers in the Territory are either Japanese or Chinese. Under the laws of the United States neither Chinese nor Japanese can become naturalized; they are not eligible to American citizenship. The act, therefore, might just as well have said that every body but Japanese and Chinese might be employed on public works, irrespectively of their citizenship. Should the law be held valid, practically the only persons who could be prohibited by its provisions from being employed in public works would be Chinese and Japanese.

I am not prepared to say what my opinion would be as to the validity of a law preventing all aliens from engaging in public work. The question does not appear to have been flatly decided by any court, although in one very recent case the Supreme Court of the United States, while refusing to pass on the question, intimated that it was a very serious one.

Aside from the constitutional question, there is in my judgment another reason why the Act should be declared void.

By a treaty between the United States and Japan, ratified in 1895, was provided as follows:

"The citizens and subjects of each of the high contracting parties shall have full liberty to enter, travel or reside in any part of the territories of the other contracting

party, and shall enjoy the full and protection for their persons and property.

"In whatever relates to the rights of residence and travel; to the possession of goods and effects of any kind; to the succession to personal estate by will or otherwise, and the disposal of property of any sort, and in any manner whatsoever, which he may lawfully acquire; the citizens or subjects of each contracting party shall enjoy in the territories of the other the same privileges, liberties and rights, and shall be subject to no higher imposts, or charges in these respects than native citizens or subjects, or citizens or subjects of the most favored nation."

"They will not be compelled under any pretext whatsoever to pay any charges or taxes other or higher than those that are, or may be paid by native citizens or subjects, or citizens or subjects of the most favored nation."

The provisions quoted, and others in the treaty, are in my judgment opposed to the provisions of the territorial law.

The law of the territory in question, as I have already said, distinguishes clearly between subjects of other countries and those of Japan and China, and for this reason is void as being in conflict with the treaty referred to.

Very respectfully,
R. W. BRECKONS.
—Hawaii Shingo.

Polltiness.

The N—s have a summer cottage in an unfrequented spot along the shore. On hot summers, when they are alone, Mr. N— allows his son aged three to go into the water without the formality of a bathing-suit. One such afternoon recently a party of young ladies arrived unexpectedly, and were comfortably settled on the wide veranda when young Richard calmly ascended the steps, clad only in unsuspecting innocence and a huge straw hat.

For an instant absolute silence reigned, then the boy's big brother said sternly: "Richard, remove your hat in the presence of ladies."

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